

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KENNETH J. NEILSON,
Defendant.

MEMORANDUM DECISION AND
ORDER DENYING WITHOUT
PREJUDICE DEFENDANT'S
FOURTH MOTION TO CONTINUE
TRIAL

Case No. 2:09-CR-286 TS

Defendant moves to continue the pretrial deadlines and the trial date for an additional 180 days. As set forth in the January 27, 2010 Order continuing trial, defendant has obtained three prior trial continuances. In January 2010, Defendant sought and obtained a 120-day continuance in order to obtain and review many years worth of tax-related documents and to review them with Defendant and to both prepare for trial and to advise Defendant regarding plea negotiations. Defendant now represents that a forensic accountant is necessary to that process. However, Defendant did not file his Motion seeking appointment of such an accountant until the same day as the present motion to continue was filed. The Court will grant that request to appoint a forensic accountant by

separate order. The Court also finds that its last order granting the 120-day continuance informed the parties that “no further continuances will be granted without a hearing.” Counsel did not request such a hearing and the time to do so before the trial set for July 28, 2010 is growing short.¹

The Court finds that there are insufficient grounds for a further six-month trial continuance and, therefore, will deny the Motion. Such denial is without prejudice to the renewal of the Motion based upon a realistic estimate of the actual time it will take for the forensic accountant to do work necessary for the adequate preparation for trial.

The Court notes that it previously held that time “for the preparation of written pretrial motions” is automatically excludable under the Speedy Trial Act based on Tenth Circuit precedent.² However, that precedent has been overturned.³ Thus, the time from the filing of the present motion to the extended deadline for filing pretrial motions may be excluded only when the trial court makes a case-specific finding that “the ends of justice served by granting a continuance outweigh the best interest of the public and the defendant in a speedy trial.”⁴

The Court made such findings in connection with the prior continuances in this case

¹Docket No. 31, at 3.

²*United States v. Mobile Materials, Inc.*, 871 F.2d 902, 913 -914 (10th Cir. 1989); and *United States v. Medrano*, 2009 WL 4547801 *2 n.3 (10th Cir. Dec. 7, 2009) (noting that [t]he question whether an extension of time to file pretrial motions is automatically excludable under the STA was then before the Supreme Court).

³*Bloate v. United States*, 130 S.Ct. 1345 (Mar. 8, 2010).

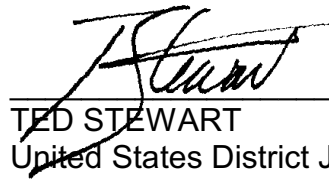
⁴Docket No. 31, at 2.

and, therefore, the time was properly excluded. Based on the foregoing, it is

ORDERED that Defendant's Motion to Continue Pretrial Deadlines and continue trial (Docket NO. 39) is DENIED WITHOUT PREJUDICE.

DATED June 21, 2010.

BY THE COURT:



TED STEWART
United States District Judge